Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 96-79
Washington, D.C. 20554

In the Matter of	)	
	)	
Streamlining the International	)	IB Docket No. 95-118
Section 214 Authorization Process and	)	
Tariff Requirements	)	

REPORT AND ORDER

Adopted: February 29, 1996 **Released: March 13, 1996**

By the Commission:

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I. INTRODUCTION

1. On July 17, 1995, we proposed to streamline the international Section 214 authorization process and related regulatory procedures for international carriers.[1] Many proposals contained in the *Notice* were developed from recommendations made by the public and by industry representatives at roundtable discussions with the International Bureau. This *Order* adopts the recommendations proposed in the *Notice* subject to modifications discussed below.[2] Implementation of these proposals will benefit U.S. consumers because they eliminate unnecessary regulatory delay and enhance the competitiveness of U.S. service providers in the world market.

2. The new regulations adopted by this Order will facilitate entrance into the international telecommunications market and expansion of international services. Under the new rules, we will: (1) issue global international Section 214 authorizations to facilities-based carriers for the provision of international services, (2) reduce paperwork obligations, (3) streamline our tariff requirements on non-dominant international carriers, and (4) ensure that essential information is readily available to all carriers and users. Implementation of these proposals will significantly improve processing and operational efficiencies. Moreover, these streamlining proposals further our mandate under the recent Telecommunications Act of

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[1] *In the Matter of Streamlining the International Section 214 Authorization Process and Tariff Requirements, Notice of Proposed Rulemaking*, 10 FCC Rcd 13477 (1995) (*Notice*).

[2] Commenters in this proceeding are: ACC Global Corp. (ACC), AT&T Corp. (AT&T), America's Carriers Telecommunications Association (ACTA), AmericaTel Corporation (AmericaTel), Ameritech Communications, Inc. (Ameritech), BT North America, Inc. (BTNA), Competitive Telecommunications Association (CompTel), GST Pacwest Telecom Hawaii, Inc. (Pacwest), MCI Telecommunications Corporation (MCI), MFS International, Inc. (MFSI), Panamsat Corporation (Panamsat), Shaw, Pittman, Potts & Trowbridge (SPPT), Sprint Communications Company L.P. (Sprint), Teleport Transmission Holdings, Inc. (TTH), and WorldCom, Inc. (WorldCom). Reply comments were filed by: AT&T, AmericaTel, BTNA, GTE Service Corporation (GTE), MCI, Telefonica Larga Distancia de Puerto Rico, Inc. (TLD), and WorldCom.

1996 ("Telecom Act")[3] to eliminate unnecessary government regulation of the telecommunications industry. In the near future, we will be considering what further deregulatory steps we can take with our new authority to further reduce or eliminate unnecessary regulations and thereby increase competition in the marketplace. We invite the public to suggest more areas in which we may minimize or forbear from existing regulation.

II. STREAMLINING INTERNATIONAL SECTION 214 AUTHORIZATIONS

1. Facilities-based carriers

(a) The *Notice*

3. In our *Notice*, we proposed to amend Sections 63.01 and 63.15 of our Rules[4] to enable U.S. facilities-based carriers regulated as non-dominant to obtain a global, rather than a country-specific, Section 214 authorization. Global authorizations would exclude certain countries that are specified in a Commission published "exclusion" list. This exclusion list may change from time to time as circumstances dictate. We proposed to grant broad authority for carriers to use half-circuits on all previously and subsequently authorized U.S. common carrier and non-common carrier facilities and any necessary foreign connecting facilities. We proposed to make applications for this type of authority eligible in most instances for our streamlined processing procedures. We also proposed to amend Section 63.05 of our Rules[5] to remove the requirement that international common carriers commence operations within a specified period of time from the Section 214 authorization date.

4. We are mindful of our statutory obligations under the Communications Act of 1934 to guard against abuses of market power in situations where effective competition does not yet exist. We meet these obligations through our Section 214 authorization process and apply dominant carrier and other safeguards where circumstances warrant. In addition, we stated that the rules proposed in the *Notice*, which eliminate many filing and prior authorization requirements, should be read in conjunction with the *Circuit Status Order*.[6] Pursuant to the rules adopted in the *Circuit Status Order*, the Commission will continue to collect and make public information from carriers identifying the countries that international carriers actually are serving through circuit status and addition reports.[7] This information aids us in our efforts to foster a more open and competitive international telecommunications

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[3] Pub. L. 104-104, 1105 Stat. 56.

[4] 47 C.F.R. §§ 63.01, 63.15 (1994).

[5] 47 C.F.R. § 63.05 (1994).

[6] *Rules for the Filing of International Circuit Status Reports*, 10 FCC Rcd 8605 (1995) (*Circuit Status Order*).

[7] 47 C.F.R. §§ 43.82, 43.61 (1994).

market.

(b) Positions of the Parties

5. Support for a global Section 214 authorization was very favorable.[8] Some commenters propose a few modifications to the mechanics of its application. Several commenters urge us to require specific Section 214 applications from a carrier affiliated with a foreign carrier that has market power in its home country when the applicant intends to provide service between the United States and that country.[9] They also suggest that the unopposed applications of U.S. carriers with foreign affiliates that do not possess market power be granted automatically under the proposed streamlined processing procedures.

6. AT&T requests that we grant global Section 214 authority to all U.S.-based carriers without foreign affiliations, whether or not they are regulated as dominant.[10] AT&T argues that there is no basis to treat dominant and non-dominant unaffiliated U.S. carriers differently under Section 214. AT&T states that, in the context of international facilities authorization, the conduct that dominant classification was meant to deter is more effectively handled through processes other than maintaining more burdensome Section 214 filing requirements for dominant unaffiliated U.S. carriers. In addition, AT&T states that the rationale for adopting certain streamlining proposals is equally applicable to dominant, unaffiliated U.S. carriers as to non-dominant U.S. carriers. MCI opposes AT&T's request stating that, with the array of economic and competitive advantages that are the product of AT&T's monopoly heritage, it is essential that the Commission continue to impose conditions on AT&T that are different from those imposed on non-dominant carriers in order to detect and prevent discriminatory and unlawful practices.

7. Sprint and MCI recommend that we modify the proposed rule on global Section 214 authorizations to specify that a dominant U.S. facilities-based carrier that has entered into a significant business relationship (*e.g.*, a co-marketing or joint venture arrangement) with a dominant foreign carrier should not be granted global Section 214 authority to that foreign carrier's home market, but must await specific approval.[11]

8. There are several other proposed modifications. MCI suggests that when an application is uncontested but requires further review, the International Bureau should inform

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[8] Those filing comments in support are ACC Comments at 2-3, ACTA Comments at 1-2, AT&T Comments at 5-6, MCI Comments at 1-4, MFSI Comments at 3-4, Panamsat Comments at 2-4, Sprint Comments at 1-3, TTH Comments at 2-3, WorldCom Comments at 2-3, and TLD Reply Comments at 1-9.

[9] Sprint Comments at 4-5. SPPT Comments at 3, and BTNA Reply Comments at 3-4.

[10] AT&T Comments at 5.

[11] Sprint Comments at 6 and MCI Reply Comments at 5-6.

the applicant of the delay by both correspondence and public notice and identify the staff person in charge of the review and the target date for completion of the review. ACTA urges the Commission to include countries on the exclusion list only in the most imperative of circumstances. WorldCom encourages us to expand our grant of global Section 214 authorizations to include the use of non-U.S. separate satellite systems, including, but not limited to, the Mexican/Solidaridad system, the Canadian ANIK system and various Russian satellite systems. WorldCom asserts that there is no reason to exclude these widely used non-U.S. satellite systems from a global Section 214 authorization and that the Commission can monitor use of these satellite systems through the Section 43.82 circuit status reports. AmericaTel states that we should define "affiliation" with a foreign carrier for purposes of Section 214 authorizations based on control of that carrier. Finally, ACC supports the elimination of the requirement in Section 63.05 of our Rules that common carriers commence operations within a specified time after obtaining Section 214 authority.[12] ACC concurs with our reasoning in the *Notice* that obtaining operating agreements from foreign carriers takes time and can delay initiation of service to particular countries.

(c) Discussion

9. We find that the public interest, convenience and necessity would be served by adopting, with some modifications, our proposed rules for global Section 214 authorizations for facilities-based carriers. Such global authorizations will enable carriers to enter new markets rapidly and use new facilities without the delays and costs associated with filing separate Section 214 applications for each new market or facility. These broader authorizations also will lessen the administrative burdens on applicants and Commission staff. WorldCom notes that to date it has filed over 500 Section 214 authorizations, but under the proposed new rules, it would require only one global Section 214 authorization and a handful of specialized authorizations.[13] The benefits to industry and government in such reductions will be substantial.

10. We note that the Telecom Act,[14] states that the Commission "shall permit any common carrier to be exempt from the requirements of Section 214 of the Communications Act of 1934 for the extension of any line."[15] We do not view this provision as applicable to our authority to require common carriers to obtain Section 214 authority to acquire, operate, or resell facilities or services to serve individual countries. When we grant a carrier initial authority to acquire and operate facilities to a particular country, we do not grant that carrier authority for an "extension of lines" within the meaning of Section 214 of the

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[12] ACC Comments at 3.

[13] WorldCom Comments at 3.

[14] Pub. L. 104-104, 1105 Stat. 56 (1996).

[15] *See* § 402(b)(2)(A), 1105 Stat. at 129.

Communications Act and Section 402(b)(2) of the Telecom Act, but instead grant that carrier authority to acquire and operate new lines to a particular geographic market. To the extent there are any staff level decisions discussing extension of lines that could be interpreted as inconsistent with this view, they do not represent the views of the Commission.[16] This leaves the necessity and the benefits of streamlining Section 214 authorizations intact.

11. Some modifications to our proposed rules are appropriate. First, the public interest would be served by expanding the types of global Section 214 applications eligible for streamlined processing to include those filed by U.S. carriers with foreign affiliations, as defined below, so long as the applications are tailored such that they do not request authority for service on routes where applicants have affiliations with foreign carriers and we have not made a determination that the affiliate lacks market power in the destination market. This expansion of streamlined processing will lessen the administrative burden on Commission staff. More importantly, this would make it possible for these foreign-affiliated carriers to enter the U.S. market faster, which would be in harmony with our recently completed *Foreign Carrier Entry Order*.[17] In that Order, we defined affiliation as an ownership interest of greater than 25 percent, or a controlling interest at any level, by a U.S. carrier in a foreign carrier, or by a foreign carrier in a U.S. carrier. We found that it would be in the public interest to allow a foreign-affiliated carrier routine access to the U.S. international services market on routes where the foreign carrier does not have market power.[18] We reached this conclusion after determining that, in conducting the Section 214 public interest analysis of an application by a foreign-affiliated carrier, we need only assess whether U.S. carriers have effective competitive opportunities to compete in a particular market if that carrier is applying for authority to serve a market where its foreign carrier affiliate has market power. We stated that foreign carriers that do not have market power lack the ability to discriminate against unaffiliated U.S. carriers.

12. Accordingly, we find here that a foreign-affiliated U.S. carrier applying for a global Section 214 authorization should be treated no differently than a U.S. carrier without foreign affiliations to the extent the affiliated carrier is seeking authority to serve routes where it is not affiliated with a foreign carrier with market power. We believe the public interest would be served by affording streamlined processing to that carrier's application. These applications should be specifically tailored, however, to ask for limited global authority to provide service to points where either the carrier does not have affiliations, or we have previously determined that its affiliate does not possess market power in that

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[16] *See, e.g., GTE Telecom Incorporated*, 9 FCC Rcd 3356, n.3 (Int. Fac. Div. 1994); *MFS International, Inc.*, 9 FCC Rcd 3673, n.4 (Int. Fac. Div. 1994). We are not aware of any Commission level decisions that are inconsistent with this view.

[17] *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95-22, *Report and Order*, FCC 95-475 (released November 30, 1995) (*Foreign Carrier Entry Order*).

[18] *Id.* at ¶ 102.

destination market. If a U.S. carrier desires to serve a market where it has an affiliation with a foreign carrier, and we have yet to determine whether that foreign carrier possesses market power there, then the U.S. carrier should file a separate application to serve that destination market. This will give us the opportunity to determine whether we need to conduct an effective competitive opportunities analysis and whether specific safeguards are necessary to prevent the foreign carrier from discriminating against competing U.S. carriers on that route.

13. We also adopt AT&T's proposal that U.S. carriers regulated as dominant for reasons other than having foreign affiliations[19] be allowed global Section 214 authority.[20] We find that in today's competitive and regulatory environment, there is no longer a need to exclude dominant carriers without foreign affiliations from enjoying the benefits of a global Section 214 authorization. We regulate U.S. carriers as dominant in order to help deter abuses of market power, such as acts of market exclusion, predatory pricing, unreasonable discrimination, and unreasonable termination or reduction of service to customers. As part of our international dominant carrier safeguards, we have required that dominant carriers obtain specific international Section 214 authority prior to acquiring and operating any circuits to provide international service on any route. This safeguard helps us monitor the facilities and capacity used by a dominant carrier in order to ensure that the carrier does not monopolize service on a particular route.[21] This safeguard also helps limit the ability of a dominant rate-base carrier to overbuild its facilities at ratepayers expense in order to enlarge its earnings. The implementation of price cap regulation, however, has diminished the incentive for dominant carriers subject to price cap regulation to invest in facilities for which they have no immediate need because the carriers do not add the cost of the facilities to their

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[19] We note that dominant carrier regulation might apply not only to carriers affiliated with foreign carriers with market power, but also to U.S. carriers that have competitively significant alliances with such foreign carriers. *See Foreign Carrier Entry Order*, *supra* note 17 at ¶ 253 (imposing dominant carrier regulation on a U.S. carrier for its provision of international basic service on particular routes where a co-marketing or other arrangement with a dominant foreign carrier presents a substantial risk of anticompetitive effects in the U.S. international services market).

[20] We will continue to require, however, that COMSAT obtain prior Section 214 authority to participate in new satellite procurements.

[21] In the case of foreign-affiliated carriers, this requirement helps us ensure that a U.S. carrier and its foreign affiliate are not routing traffic between the United States and an affiliated country in a manner that discriminates against other U.S. carriers that are prevented from enjoying the same benefits of self-correspondency. Therefore, we still will not afford streamlined processing for applications from any U.S. carrier that has an affiliation with a foreign carrier in a destination market unless the Commission has made an earlier determination that its affiliate does not possess market power in that destination market.

rate base.[22] And, with the large growth and variety of available facilities for international service, the opportunity to monopolize facilities on a route has nearly vanished. These regulatory and market changes have reduced the need to use the Section 214 authorization process to guard against abuses of a dominant carrier's market power. We believe the examination of accounting rate and service agreements between a carrier and its correspondent is a much better tool for preventing market exclusion. We also believe there are better methods of detecting possible unlawful exploitation of U.S. domestic bottleneck facilities, such as the complaint process. We note that U.S. carriers, currently found dominant for reasons other than having foreign affiliations or alliances, will still be subject to the restrictions on obtaining global Section 214 authority if they have affiliations with foreign carriers for which we have yet to make a market power determination.

14. We accordingly adopt the following steps for the application and processing of global Section 214 authority for facilities-based carriers. We amend Section 63.01 to make it applicable only to domestic authorizations, create a new Section 63.18 for international Section 214 authorizations, and revise Section 63.15 to facilitate applications for broad international Section 214 authority. Both new carrier applicants, as well as any carriers operating under international Section 214 authority granted prior to this rulemaking, may obtain global Section 214 authority by submitting a new Section 214 application to operate as a facilities-based carrier pursuant to terms and conditions of Section 63.18(e)(1). Subject to the exceptions outlined below,[23] these applications will be processed using the same streamlined procedures used for resale applications.[24] That is, once we have reviewed the applications to determine eligibility for streamlined processing, we will place them on public notice as accepted for filing, and state whether they will be streamlined or not. Petitions to deny streamlined applications must be filed within 21 days.[25] If streamlined applications are unopposed, they will be deemed granted 35 days after the date of the initial public notice of acceptance for filing, and the applicants may commence operations on the 36th day. Shortly after the streamlined application has been granted, we will issue a second public notice that will be published in the FCC Record and will serve as the applicants' Section 214 authorization. The second public notice will list the applications granted and restrictions, if any, on providing service to particular countries and on the use of certain facilities. The restrictions listed will consist of both general restrictions that apply to all carriers receiving

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[22] *See In the Matter of Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices For Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers, Report and Order*, 7 FCC Rcd 4561, 4563 (1992).

[23] *See infra* ¶ 15.

[24] *See* 47 C.F.R. § 63.12 (1994).

[25] *See infra* ¶¶ 65, 69 for a discussion of WorldCom's argument that the public notice period should remain thirty days.

global Section 214 authority,[26] as well as specific restrictions to particular carriers, such as those with affiliations in destination markets.[27] It also will state that, as a condition of the Section 214 authorization, the carrier will be subject to any future modifications made to the exclusion list described below. The notice also will state that, in cases where a carrier becomes affiliated with a foreign carrier after authorization is granted, it must notify the International Bureau promptly of the details of every such affiliation, pursuant to the provisions of Section 63.11.[28] The carrier would then be subject to possible reclassification as a dominant carrier on an affiliated route pursuant to the provisions of Section 63.10.

15. Applications that are contested or require the International Bureau either to conduct an effective competitive opportunities analysis or make a determination as to the degree of market power possessed by a foreign carrier affiliate will not be eligible for streamlined processing. If we remove an application from streamlined processing, after originally giving public notice that it will be streamlined, the International Bureau will issue a public notice stating the change in processing status, and inform the applicant by sending it a copy of the public notice and by identifying the name of a staff contact person and date for a status conference. This notification will be done within 28 days from the date of the initial public notice listing the application as being subject to streamlined processing (*i.e.*, one week after the due date for petitions to deny). Non-streamlined applications will be acted upon by written order, instead of public notice.

16. Under these global Section 214 authorizations, authority will be given to use half-circuits on all U.S. common carrier and non-common carrier facilities previously and subsequently authorized by the Commission and on any necessary foreign connecting facilities. This includes both common carrier and non-common carrier submarine cables landing in the United States, INTELSAT satellites, U.S. separate system satellites and the U.S. earth stations licensed by the Commission to communicate with these satellites. If an applicant requests to use facilities not yet authorized then the applicant will have to file a separate Section 214 application. For instance, we still require that proposed owners of new common carrier submarine cable systems obtain separate Section 214 authority to construct and operate the cable.

17. The International Bureau will maintain an exclusion list that identifies any restrictions on providing service to particular countries or using particular facilities, and whether separate Section 214 authority is needed for these countries and/or facilities.[29] The

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[26] *See infra* ¶ 17.

[27] *See supra* ¶ 12.

[28] 47 C.F.R. § 63.11 (1994).

[29] For example, because of U.S. Department of State requirements, the Commission has separate filing requirements for service to Cuba. *See FCC To Accept Applications for Service to Cuba, Public Notice,* Rep. No. I-6831, released July 27, 1993 (requiring special procedures for filing applications for service

International Bureau will include the exclusion list as part of each public notice listing granted streamlined applications, or in the case of non-streamlined grants, in the granting order. A copy will be maintained in the International Bureau's Reference Center. The general exclusion list included with the most recent public notice listing streamline granted applications will apply to all carriers that have previously received global Section 214 authority under this rule, whether by streamlined grant or specific written order.

18. For situations where the public interest requires us to amend the exclusion list either to remove or impose restrictions on service to a particular country or use of specific facilities previously permitted under an existing global Section 214 authorization, we will first issue a public notice giving affected parties opportunity for comment and hearing on the proposed changes. We will then release an order amending our exclusion list. In response to ACTA, we envision such exclusions only taking place in the most imperative of circumstances. If the President issues an Executive Order to prohibit or restrict service to a particular country or use of specific facilities, however, we will amend our exclusion list and issue a public notice to that effect *without* opportunity for comment or hearing.[30] In all such circumstances, carriers will be prohibited from providing service to countries or using facilities appearing on the exclusion list.

19. We do not adopt at this time WorldCom's proposal to include the use of non-U.S. licensed satellite systems, including affiliates of INTELSAT and Inmarsat, in this global authorization. The use of these systems is the subject of another proceeding.[31] If at a future date we determine the routine authorization of particular non-U.S. satellite systems is in the public interest, we will remove them from the exclusion list.

20. We also amend Section 63.05 which requires carriers to commence operation within a specified time after the Section 214 authorization date. International carriers need to obtain operating agreements from foreign carriers. Obtaining such agreements may be

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to Cuba). Additionally, the Commission, at times, has restricted service on certain facilities, such as non-U.S. satellites and non-common carrier cables. *See e.g., American Telephone and Telegraph Company*, 8 FCC Rcd 2668 (Common Carrier Bureau 1993) (restricting the number of circuits authorized for use on the Intersputnick Satellite for the provision of switched services); and *Optel Communications, Inc.*, 8 FCC Rcd 2267 (1993) (conditional license); *Optel Communications, Inc.*, 9 FCC Rcd 6153 (1994) (Final License) (discrimination concerns about the ability of U.S. carriers to compete for Canadian telecommunications customers as a result of the CANUS-1 cable would be addressed in the Section 214 authorization process).

[30] *See International Emergency Economic Powers Act*, 50 U.S.C. §§ 1701 *et. seq.* (1977)(where a foreign country poses a threat to national security, the President of the United States has authority to investigate, regulate or prohibit commercial/financial activities with that country).

[31] *See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, and DBS Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide International DBS Service*, FCC 96-14, at ¶ 5 (released Jan. 22, 1996) (*DISCO I*).

delayed by events outside U.S. carriers' control. Consequently, we amend Section 63.05 so that international common carriers need not commence providing service within a specified time after the Section 214 authorization date. Carriers' traffic reports will advise the Commission of the year that carriers actually initiate service to individual countries.[32] Consolidated traffic reports will relate such information annually to industry.

2. Resellers

(a) The *Notice*

21. In the *Notice*, we proposed to expand the authority of resale carriers. Currently, Section 63.01(k)(6)(ii) requires applicants that propose to provide service through the resale of international switched or private line services of another U.S. carrier to specify the names of the U.S. carriers and their specific tariffs to be resold.[33] Consequently, when resellers want to resell services of carriers that are not listed in their initial Section 214 applications, resellers file new Section 214 applications to obtain the requisite authority. In the *Notice*, we proposed to enable resellers to provide international resale services via any authorized U.S. carrier, except those affiliated with the reseller. Under the proposal, applicants would obtain an initial Section 214 authorization for resale services and, then, would be able to add new unaffiliated underlying carriers without further Section 214 authority. We tentatively concluded that our prior authorization requirement was no longer needed because we receive sufficient information regarding resellers' activities from Section 43.82 circuit addition reports and from Section 43.61 traffic reports.[34]

(b) Positions of the Parties

22. No party opposes our proposal or our rationale.[35] Three commenters, however, suggest modifications to our proposal. TTH recommends that the Commission expand the category of carriers that a reseller may use under a blanket Section 214 authorization to include non-dominant, U.S. facilities-based carriers affiliated with the reseller.[36]

23. MFSI proposes that the Commission permit non-dominant, U.S. facilities-based carriers to provide service in correspondence with affiliated foreign resellers that lack

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[32] 47 C.F.R. § 43.61 (1994).

[33] 47 C.F.R. § 63.01(k)(6)(ii) (1994).

[34] *See supra* note 6.

[35] Supporting comments were filed by: ACTA Comments at 2, BTNA Comments at 2, TTH Comments at 3, MFSI Comments at 4, Ameritech Comments at 2, and AmericaTel Comments at 6.

[36] TTH Comments at 3.

market power, subject to applicable tariff and contract filing requirements and common carrier non-discrimination obligations.[37] MFSI states that, under the Commission's current policy, a U.S. carrier (dominant or non-dominant) that seeks to connect a U.S. half-circuit (owned, indefeasible right-of-user (IRU), or leased) with a leased, foreign private line half-circuit to provide a switched basic service must obtain country-by-country Section 214 authority and make an "equivalency showing." MFSI states that this advances the interests of the largest carriers by reducing the level of effective competition in the marketplace without any countervailing public benefits. Similarly, SPPT suggests streamlined processing for U.S. non-dominant carrier applicants that propose to use their own U.S. half-circuits in connection with leased foreign half-circuits to provide service between the United States and the foreign country where the leased half-circuits terminate.[38]

(c) Discussion

24. We find that the public interest would be served by adopting our proposed rule, as modified below, to allow resellers to provide international resale of switched or private line services via any authorized carrier, except U.S. facilities-based affiliates that are regulated as dominant on routes the carrier seeks to serve. We agree with TTH that applicants that propose to resell services of an affiliated U.S. facilities-based carrier on routes where the affiliate is regulated as non-dominant do not raise discrimination or other anticompetitive concerns and can be subject to streamlined procedures. First, if we have already determined that a carrier is non-dominant on a route, then by definition we have found that carrier to lack sufficient market power to engage in anticompetitive conduct. Second, a reseller, whether affiliated with the underlying carrier or not, is purchasing services pursuant to a tariff or contract filed with the Commission, which means that any competing reseller may purchase the affiliated facilities-based carrier's services on the same terms and conditions as the affiliated reseller. Last, the rule as originally proposed would create an inconsistency with another change we are making because the affiliated non-dominant facilities-based carrier would receive streamlined processing of its Section 214 application, but the affiliated reseller would be ineligible for streamlined processing.

25. Accordingly, we here amend existing Section 214 resale authorizations to allow carriers to resell international switched or private line services via any authorized carrier, except U.S. facilities-based affiliates that are regulated as dominant on routes the reseller seeks to serve. Thus, existing resellers no longer need to obtain additional authorizations to resell services of carriers not identified in their initial authorization. This change also will apply to all future Section 214 resale authorizations we issue. Specific Section 214 authority is needed, however, to resell an affiliated dominant carriers' services. In particular, if a reseller desires to resell service of an affiliated underlying carrier that is regulated as dominant on some routes and not on others, the reseller is now authorized to

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[37] MFSI Comments at 2, 7.

[38] SPPT Comments at 3.

resell that carrier's services on those routes on which the underlying carrier is non-dominant. The reseller should file a separate Section 214 application, however, to provide resale service on routes where the underlying carrier is deemed dominant. In addition, we will not streamline process any application for Section 214 resale authority if the applicant has an affiliation with a foreign carrier in a destination market, and we have yet to make a determination whether that foreign carrier possesses market power in that market.[39]

26. This flexible approach will give resellers a greater selection of underlying carriers which will stimulate more competition in price and quality. Also, resellers will be able to reduce their operating costs by using the most efficient resale arrangements available. Reducing the administrative burdens of filing supplemental applications and regulatory time delays in implementing service should facilitate carriers' ability to provide competitive international services at lower prices.

27. We addressed MFSI's and SPPT's concerns in our *Foreign Carrier Entry Order* where we adopted their proposals in part. In that Order, we clarified that a carrier will be considered facilities-based if it holds an ownership, indefeasible-right-of-user or leasehold interest in an international facility, regardless of whether the underlying facility is a common or non-common carrier submarine cable, or an INTELSAT or separate satellite system.[40] We stated that our definition of a facilities-based carrier focuses solely on the U.S. half-circuit. We do not consider the nature of a U.S. carrier's interest, if any, in the corresponding foreign half-circuit. We also stated that we would allow a U.S. facilities-based carrier to provide switched services over its private lines without a demonstration of equivalency, subject to two exceptions. First, the U.S. carrier may not correspond with a carrier that directly or indirectly owns the foreign half-circuit in a market that we have not found to offer equivalent resale opportunities. Second, the switched traffic carried over facilities-based private lines may only be interconnected to the public switched network on one end. Where the U.S. carrier connects its facilities-based private line half-circuit with a foreign half-circuit in correspondence with a foreign carrier that owns the underlying half-circuit, we will require that it obtain additional Section 214 authority and demonstrate that equivalency exists. Likewise, where a U.S. carrier seeks to interconnect its facilities-based private line to the public switched network on both ends, we will also require that it obtain additional Section 214 authority and demonstrate equivalency.[41]

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[39] Like the applications of foreign-affiliated U.S. carriers for global Section 214 facilities-based authority, if an applicant with affiliations in a foreign market desires streamlined processing, it should tailor its application to remove the request to serve that affiliated market. *See supra* ¶ 12.

[40] *Foreign Carrier Entry Order* at ¶ 130.

[41] *Foreign Carrier Entry Order* at ¶¶ 157-159.

3. Resale of private lines for switched services

(a) The *Notice*

28. In the *Notice*, we proposed to allow private line resale carriers to resell switched services via interconnected private lines to all countries that the Commission designated as offering equivalent resale opportunities to U.S. carriers. Under the proposal, carriers would need only obtain an initial Section 214 authorization to resell interconnected private lines to provide switched service. This authorization would cover all countries that are designated equivalent at the time the application is granted and extend automatically to countries later found to be equivalent.[42] We proposed two exceptions: (1) where the U.S. carrier has an affiliation with the U.S. facilities-based carrier whose international private line services it desires to resell (either directly or indirectly through the resale of another reseller's services) and (2) where the carrier seeks authority to resell international private line services to a country in which the foreign carrier with which it has an affiliation owns or controls telecommunications facilities. When these exceptions pertain, applications would be acted upon only by formal written order.

(b) Positions of the Parties

29. All of those commenting support authorizing private line resellers to resell interconnected private line service to provide switched services to any country deemed equivalent.[43] AT&T and Sprint, however, propose some modifications.[44] AT&T suggests that, in lieu of the Section 214 applications that would be eliminated by implementation of the proposal, we impose a notification requirement for international private line resellers on routes already found "equivalent." AT&T proposes that private line resellers notify the Commission when they initiate service to an equivalent country and that the notifications be placed on public notice. AT&T believes this notification requirement is necessary to monitor: (1) the effect of private line resale on the U.S. net settlements outpayment, (2) progress towards the Commission's objective to place downward pressure on accounting rates through private line resale activity, and (3) international private line resellers that allegedly are not

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[42] *Notice* at ¶ 22.

[43] Supporting comments were filed by: ACTA Comments at 3, BTNA Comments at 2, ACC Comments at 3-4, AmericaTel Comments at 7. Sprint supports the proposal but proposes a modification. *See infra* ¶ 30.

[44] Sprint Comments at 7, AT&T Comments at 7-8. ACC and MFSI also propose that the Commission adopt new rules and policies to permit authorized private line resale carriers to provide service to points beyond a country designated equivalent. ACC Comments at 6, MFSI Comments at 5-7. A similar proposal was made and addressed in the *Foreign Carrier Entry Order* at ¶¶ 165-70, so need not be addressed here.

complying with the traffic and circuit addition reporting requirements.[45]

30. Sprint requests a modification to the exception that a carrier previously authorized to resell interconnected private lines would not automatically be able to provide such resold services to newly designated equivalent countries if the carrier has an affiliation in the equivalent country. Sprint asks that the exception be modified to ensure that it applies only in cases where the foreign carrier affiliate possesses market power in the equivalent country.[46]

(c) Discussion

31. We find that the public interest would be served by adopting, with modification, our proposed rules to enable carriers to resell private lines for switched services to certain new locations more rapidly and thus serve their customers more efficiently. The proposal will increase competition in the international telecommunications market. It also will further reduce administrative burdens and associated regulatory costs incurred by carriers and the Commission. We thus conclude that, subject to the exceptions below, carriers no longer need to obtain separate Section 214 authority to resell private lines to provide switched service to additional countries that are determined by the International Bureau, currently or subsequently, to provide equivalent resale opportunities for U.S.-based carriers, as defined in the *Foreign Carrier Entry Order*.[47]

32. We do not find a need to adopt AT&T's proposed reporting requirements. The Commission already imposes a reporting requirement on non-dominant international

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[45] AT&T Reply Comments at 8.

[46] Sprint Comments at 7.

[47] *See Foreign Carrier Entry Order* at ¶¶ 133-138. In that order, we restated our equivalency policy in terms of the four effective competitive opportunities factors that serve as the basis for authorizing private line resale to a country. Applicants seeking to provide switched service over resold private lines must demonstrate that the foreign country at the other end of the private line provides U.S. carriers with: (1) the legal right to resell international private lines, interconnected at both ends, for the provision of switched services; (2) nondiscriminatory charges, terms, and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement; (3) competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale, and (4) fair and transparent regulatory procedures, including separation of the regulator and operator of international facilities-based services. Although we used the term effective competitive opportunities, we stated in that Order that we would avoid confusion by continuing to use the term equivalency to denote the required finding for authorizing interconnected private line resale on a particular route. *Id.* at ¶ 136. *See also, In the Matter of the Regulation of International Accounting Rates Proceeding, Phase II, First Report and Order*, 7 FCC Rcd 559 (1992) (*International Resale Order*).

private line resellers that provide switched services.[48] For the first three years following an equivalency finding, we have required non-dominant international private line resellers providing switched or interconnected international private line services between the United States and a destination country to file with the Commission semi-annual traffic reports that contain the same information filed in the annual traffic reports. After three years, the carriers file only the annual traffic reports pursuant to Section 43.61 of the Commission's Rules. The current Section 43.61 traffic manual specifically requires that "facilities resale carriers," i.e., private line resellers, report U.S. outbound and inbound traffic originating or terminating over resold U.S. private lines. Private line resellers are required to report their traffic according to the ultimate point of termination or origination. The Commission publishes this information annually.

33. We generally agree, however, with Sprint's proposed modification. We believe the public interest, convenience and necessity would be served by authorizing U.S. interconnected private line resellers with foreign affiliations to be able to provide interconnected private line services to all countries found in the future to offer equivalent resale opportunities, subject to one caveat. If such a carrier is affiliated with a foreign carrier in the equivalent country, we must have already made a determination that the affiliated foreign carrier does not possess market power in that country. In the absence of such a determination, the U.S. carrier shall file a Section 214 application for interconnected private line service to that country so that we may examine the foreign carrier's market power position in the equivalent country. We believe that this approach will allow the Commission to weigh the potential for anticompetitive behavior by the foreign carrier, while at the same time fulfill the goal of this rulemaking of easing regulatory burdens.

34. Accordingly, we adopt our proposed rule that allows automatic expansion of existing Section 214 authority for carriers to resell interconnected private lines to provide switched services to all countries designated equivalent. We find that separate Section 214 authority is no longer needed because we will receive information identifying the countries that individual international private line resellers are serving through traffic reports filed under Section 43.61 of the Commission's Rules and circuit addition reports filed under Section 43.82 of the Commission's Rules. Traffic reports will be filed on a semi-annual basis for the first three years following an equivalency finding. Streamlined processing will not, however, be available to applicants with foreign carrier affiliates that are dominant in the destination market.

35. We additionally modify our rules in Section 63.18(e)(4) to permit the same automatic expansion of existing Section 214 authorities for facilities-based private line carriers to provide switched service to countries designated as equivalent. Although we did

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[48] *See, e.g., ACC Global Corporation/Alanna Inc., Memorandum Opinion and Order*, 9 FCC Rcd 6240 (1994) (*ACC/Alanna Order*); *fONOROLA/EMI Order, Memorandum Opinion and Order*, 7 FCC Rcd 7312 (1992); *fONOROLA/EMI Order on Reconsideration*, 9 FCC Rcd 4066 (1994) (*fONOROLA Reconsideration Order*).

not specifically propose automatic expansion of authority for facilities-based private line carriers in the *Notice*, we had not at that time adopted rules for the provision of switched basic services over facilities-based private lines. Now that the *Foreign Carrier Entry Order* has established such rules,[49] we see no reason not to extend to facilities-based private line carriers the same automatic expansion policy that we proposed and have adopted for interconnected private line resellers.

4. Non-common carrier satellite and cable systems

(a) The *Notice*

36. Currently, we require all carriers to obtain Section 214 authority to acquire or lease capacity on non-common carrier facilities and additional Section 214 authority to add circuits on these facilities.[50] In the *Notice*, we proposed that once a non-dominant, facilities-based carrier obtains an initial Section 214 authorization, which may be for global or specific capacity on a non-common carrier system, it would not have to file additional Section 214 applications to add circuits on previously authorized non-common carrier facilities.[51] This authorization would be subject to the provisions of the exclusion list identifying facilities on which the Commission has placed restrictions.[52]

(b) Positions of the Parties

37. Generally, parties support our proposal.[53] AT&T believes, however, that U.S. carriers regulated as dominant, for reasons other than having foreign affiliations, should not be required to file individual Section 214 applications whenever they seek to acquire capacity on a non-common carrier cable or satellite system. AT&T suggests that, if the Commission needs to monitor such purchases by these carriers, after-the-fact reporting of such capacity purchases would be adequate even if intervention was necessary.[54] WorldCom asks the Commission to clarify that this proposal applies equally to all non-common carrier facilities, whether U.S.- or foreign-authorized.

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[49] *Foreign Carrier Entry Order* at ¶¶ 157-161.

[50] 47 C.F.R. § 63.15(a) (1994).

[51] *Notice* at ¶¶ 23-26.

[52] *See supra* ¶ 17.

[53] Supporting comments were filed by: ACC Comments at 4, TTH Comments at 3, MFSI Comments at 4, MCI Comments at 3, Panamsat Comments at 4. AT&T and WorldCom support the proposal with some modifications. *See* AT&T Comments at 8-9 and WorldCom Comments at 3-4.

[54] AT&T Comments at 9.

(c) Discussion

38. We find that the public interest will be served by adopting our proposal to eliminate the Section 214 authorization requirement to add circuits on U.S. licensed non-common carrier facilities. As we stated in the *Notice*, Section 214 authorization was needed for our long-range facilities planning responsibilities as well as to assure compliance with Commission conditions placed on non-common carrier systems. But, we discontinued the North American, Pacific and Caribbean facilities planning processes in 1988. Additionally, necessary conditions on the non-common carrier facilities are normally placed on the original authorization for construction and operation of those facilities and not on the subsequent Section 214 facilities authorizations for acquiring capacity on them. If, as in *Optel*,[55] there is a need to place restrictions on the use of a non-common carrier system, we will place those restrictions in both our exclusion list and any specific Section 214 authorization to use the facility. In light of these changes, there is no longer a need to maintain the individual Section 214 applications for carriers seeking to acquire additional capacity on U.S. non-common carrier systems.[56]

39. We adopt in part AT&T's proposal that U.S. carriers regulated as dominant, for reasons other than having foreign affiliations, also be allowed to add circuits on non-common carrier facilities without seeking additional authorization. As stated in our discussion about granting global Section 214 authorities to such carriers, there is no longer a regulatory need to treat these types of dominant carriers differently than non-dominant carriers when it comes to adding circuits on a facility.[57] These carriers, however, will still need to file a Section 214 application if they seek to add circuits on a non-common carrier system to a point where they have an affiliate that possesses market power.

5. Conveyance of cable capacity

(a) The *Notice*

40. In our *Notice*, we proposed to no longer require dominant carriers to obtain Section 214 authority prior to conveying transmission capacity in submarine cables.[58] In the

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[55] *See supra* note 29.

[56] In regard to WorldCom's comments, we note that this rule only applies to U.S. licensed facilities. Whether to apply such procedures to non-U.S. licensed satellite systems will be determined at another time. *See supra* ¶ 19.

[57] *See supra* ¶ 13.

[58] Our proposal to eliminate the Section 214 authorization requirement originated from AT&T. *See Petition to Eliminate Requirements that Certain U.S. Carriers obtain Commission Authorization Prior to Conveying Interests in Communications Facilities to Other U.S. Carriers*, ISP 93-012 (Dec. 15, 1994). But, MCI opposed the request. Ultimately, the two parties settled on a notification requirement to

past, we required dominant carriers to obtain such authority in order to monitor the identity of non-dominant carriers acquiring such transmission capacity and to monitor dominant carriers' activities and ability to influence and control the use of the submarine cables. Collecting such information and making the dominant carrier's activities public was appropriate when there was limited submarine cable transmission capacity. Given the large increase in submarine cable transmission capacity to all major markets and the entrance of many new competitors in these markets, however, we tentatively concluded that the requirement was no longer necessary.

(b) Positions of the Parties

41. Several parties support the proposal.[59] MCI, however, submits that the existing Section 214 authorization requirement for the conveyance of cable capacity by dominant carriers is valuable because it affords an opportunity for public notice and comment in response to proposed transactions. While MCI recognizes that the Communications Act does not require prior Commission authorization, MCI believes that the public interest, at least for the time being, requires that conveyance of capacity from a dominant U.S. carrier to another U.S. carrier be subject to such authorization. MCI asserts that, even though terms and conditions relating to submarine cable conveyances are mutually derived and the amount of available capacity and the number of new users has increased in recent years, there is still incentive for dominant carriers to frustrate their non-dominant carrier competitors' ability to negotiate reasonable rates for purchase of submarine cable capacity.[60]

42. MCI recommends that the Commission require dominant carriers like AT&T to provide the following information in connection with the conveyance of transmission capacity to other U.S. carriers: (1) name of the party to whom the capacity is to be conveyed; (2) name of the facility in which capacity is to be conveyed; (3) description of the amount of capacity to be conveyed, and (4) the price of the capacity to be conveyed. MCI asserts that its proposal allows the Commission and interested members of the public to remain aware of these transactions.[61]

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replace the Section 214 authorization requirement. *See Notice* at note 33 (explaining the history of the notification requirement).

[59] Parties filing supporting comments are: ACTA Comments at 3, MFSI Comments at 4, and AT&T Comments at 9-10. We note that AT&T suggests that we apply this rule to conveyances of capacity from any carrier to unaffiliated U.S. carriers that are considered non-dominant or dominant. Our proposal already would permit this to occur.

[60] MCI Comments at 5-6.

[61] MCI Comments at 5. As an alternative to the Commission's proposal, MCI suggests that the Commission reduce from 30 to 14 days the public notice period for these types of applications, which would make the application process shorter, while still giving third parties an opportunity to determine whether the proposed conveyances would be in the public interest. MCI Comments at 6. In its Reply

43. While ACTA supports the Commission's proposal, it agrees with MCI's concerns. ACTA believes that the Commission should be ready to eliminate any discrimination or unreasonable practices in the negotiations for transmission capacity in submarine cables.[62]

(c) Discussion

44. We find that the public interest will be served by adopting a modification of the proposal set forth in the *Notice*. We find that the best approach would be to replace the Section 214 authorization requirement with a notification requirement for dominant carriers seeking to dispose of transmission capacity in submarine cables.[63] These carriers will notify the Commission of their conveyances under Section 63.21(e). The International Bureau will issue a public notice of these conveyances. Dominant carriers should provide the following information in connection with the conveyance of transmission capacity to other U.S. carriers: (1) name of the party to whom the capacity is to be conveyed; (2) name of the facility in which capacity is to be conveyed; (3) description of the amount of capacity to be conveyed, and (4) the price of the capacity to be conveyed. This notification shall be filed with us within thirty days after the conveyance.

45. Replacing the Section 214 requirement with a notification requirement reduces the regulatory burdens imposed on dominant carriers. As a result, dominant carriers will be able to act more quickly to upgrade their facilities which, in turn, will enable higher quality service for their customers. At the same time, the minimal burden of a notification requirement will enhance competition by providing price and terms to non-dominant carriers,

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Comments, however, MCI withdrew this suggestion, stating that the current thirty-day public comment period serves the public interest. MCI Reply Comments at 7. MCI further states that, if an application needs to be challenged, a 14-day filing period would not provide adequate time. MCI states that there is nothing on the record that shows that the application process places a significant burden on dominant carriers in connection with their conveyance of cable capacity. If meritless petitions are filed, MCI contends that the Commission should respond promptly and authoritatively.

[62] ACTA Comments at 3.

[63] As we discussed in the *Notice*, the Commission has considerable discretion in deciding how to make its Section 214 public interest finding. Section 214(a) imposes no detailed procedural requirements, nor does it specify the amount or type of information to be obtained from applicants. Thus, we have authority to set overall regulatory policies applicable to common carriers when we perceive this approach to be in the public interest. In particular, we may make Section 214 public interest findings in the form of broad policies of general applicability to all entrants within a given class. We have taken this approach when a competitive environment exists, as the development of competition reduces the degree of regulation necessary to protect the public interest. Where we find competition exists in the international telecommunications marketplace, we believe that the Communications Act provides us sufficient flexibility to allow the streamlined procedures we adopt in this rulemaking. For a more detailed discussion of our legal authority to impose streamlined requirements on international carriers, *see Notice* at ¶¶ 6-7.

enabling them to negotiate reasonable prices for conveyance of cable capacity in submarine cables.

6. Discontinuances

(a) The *Notice*

46. In the *Notice*, we proposed to clarify and to modify several sections of the Commission's Rules that prescribe procedures for carriers to follow when retiring, discontinuing, reducing or impairing service to a geographic market. Currently, Section 63.15(c) states that "[a]ny party certified to provide non-dominant international communications services to a particular geographic market is required to give one hundred and twenty days' notice prior to discontinuing service to that geographic market."[64] We have received many inquiries from the industry as to whether carriers should follow this simple notification requirement or the more extensive notification requirement in Section 63.71, which specifies to whom non-dominant international carriers should provide notification, what the contents of the notification should be, and whether and what notice should be given when the carrier's service is being discontinued, reduced or impaired but when overall service to the geographic market is not.[65]

47. To address this situation, we proposed to clarify that non-dominant international carriers should follow the less burdensome of our notification rules, Section 63.15(c), and not Section 63.71. We also proposed to modify Section 63.15(c) to require non-dominant international carriers that seek to discontinue, reduce, or impair service to a community to: (1) notify their customers in writing at least sixty days in advance of their action, as opposed to the current one hundred and twenty days and (2) send a copy of this notification to the Commission. Additionally, we proposed to simplify the requirements that carriers follow when they retire international facilities, but overall service to a geographic market is not being discontinued, reduced or impaired.

(b) Positions of the Parties

48. Commenters support simplifying the process and reducing the notification period for discontinuances.[66] For example, AT&T states that a letter of notification to the Commission sixty days in advance when carriers retire international facilities where service

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[64] 47 C.F.R. § 63.15(c) (1994).

[65] Section 63.71 requires non-dominant carriers to notify all affected customers of the planned discontinuance, reduction or impairment, file an application with the Commission that certifies that notice has been given to affected customers, explain the method and date of such notification, and provide any additional information that the Commission may require. 47 C.F.R. § 63.71 (1994).

[66] Supporting comments were filed by: TTH Comments at 4, AT&T Comments at 10, ACC Comments at 4, MFSI Comments at 4, WorldCom Comments at 2.

to the geographic market is not being discontinued, reduced or impaired is sufficient. TTH states that sufficient (sixty-day) notice to the Commission and customers is the only necessary restriction on retiring, discontinuing, reducing or impairing service.[67]

(c) Discussion

49. We find that the public interest will be served by adopting the proposals set forth in the *Notice*. The increase in the number of international carriers and competition in international services means that customers can switch to another international carrier if service is discontinued by their current carrier. We believe it is necessary to have a sixty-day notification requirement so that customers will have sufficient time to secure an alternative service provider before their service is discontinued. To avoid confusion, we will delete Section 63.15(c) and add a new subpart in Section 63.19 that clearly details the notification requirements for discontinuing, reducing or impairing service. This new rule requires non-dominant international carriers that seek to discontinue, reduce, or impair service to a community to: (1) notify their customers in writing sixty days in advance as opposed to the current one hundred and twenty days and (2) send a copy of this notification at least sixty days in advance of their action to the Commission. Where competition has increased both in the number of available facilities and the number of carriers providing common carrier and non-common carrier services, we conclude that impairment of service is unlikely and customers will be able to obtain alternative service within sixty days.

50. Sections 63.62(a) and 63.500 are modified to state specifically that Section 214 authority is not needed for dominant and non-dominant carriers retiring submarine cables where service to the geographic market is not being discontinued, reduced or impaired. Customers' service is rarely impaired because carriers typically move their customers over to new facilities before retiring a cable. Instead, international carriers that are retiring submarine cables that do not impair service to a community will follow the same notification requirement in Section 63.19 as non-dominant international carriers that are discontinuing service to a community. Dominant carriers that seek to retire facilities that will impair or reduce service to a community, however, shall still file applications pursuant to Sections 63.62(a) and 63.500.[68]

7. Cable landing license applications

(a) The *Notice*

51. In the *Notice*, we proposed to simplify the application process for carriers to obtain submarine cable landing licenses and the associated international Section 214 authorizations by reducing the information carriers submit. We proposed to eliminate the

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[67] TTH Comments at 4.

[68] 47 C.F.R. §§ 63.62(a), 65.500 (1994).

requirement in Section 1.767 that applicants specify the proposed use, need and desirability of the cable.[69] Additionally, we proposed to allow applicants to provide a general geographic description of the landing points in their initial applications as long as the precise landing points are provided at least ninety days prior to construction.

(b) Positions of the Parties

52. Most commenters support simplifying the cable landing license application process.[70] MCI, however, believes that the Commission's proposal goes too far. MCI is concerned that the relaxed requirements will spawn speculative applications from applicants that are not ready to build cable systems and intimidate others that may be more likely to build systems. Also, MCI asserts that the proposal will diminish a company's ability to assess the future availability of cable capacity on any given route if applications are granted that do not identify precise landing points. Thus, MCI recommends, at a minimum, that the Commission require applicants to: (1) file semi-annual or annual updates that include a projected date when the precise landing points will be identified, with the date always being no less than ninety days before the construction is to begin and/or (2) disclose to an interested party, upon written request, information concerning the location and timing for the construction of the cable facility.[71] MCI recommends that the Commission reserve the right to review any licenses, and, where appropriate, revoke them if their continuing pendency would be contrary to the public interest, subject to prior public notice and an attendant comment period.[72]

53. In contrast, AT&T agrees with the *Notice*'s proposed rule that reduces the amount of information required in cable landing license applications. AT&T suggests that the Commission go further.[73] AT&T recommends eliminating the same information, with one exception, from the cable landing license application for non-common carrier submarine systems as the *Notice* proposed to do for international Section 214 applications for new common carrier cable systems. AT&T states that the Commission should retain the requirement that cable landing license applicants for non-common carrier submarine systems submit information relating to international comity, as federal law requires the Commission to consider international comity in determining whether to grant a submarine cable landing

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[69] 47 C.F.R. § 1.767 (1994).

[70] Supporting comments were filed by: ACC Comments at 2, and WorldCom Comments at 2. AT&T and MCI support the proposal with modifications. AT&T Comments at 10-11, MCI Comments at 6-8.

[71] MCI Comments at 7-8.

[72] MCI Comments at 8.

[73] AT&T Comments at 10.

license.[74] AT&T contends that the market, and not the Commission, should determine whether and where there are current or anticipated needs for submarine cable systems, regardless of whether they are built on a non-common carrier or common carrier basis.[75]

(c) Discussion

54. We find that the public interest is served by reducing the amount of information submitted in cable landing license applications as proposed in the *Notice* with some modifications. As proposed in the *Notice*, we no longer will require applicants to specify the proposed use, need and desirability of the cable in their cable landing license applications. Additionally, applicants will have the option to provide a general geographic description of the landing points in their initial applications. Grant of the application will be conditioned, however, on our final approval of a more specific description of the landing points to be filed by the applicant no later than ninety days prior to construction. We will give public notice of the filing of this description, and grant of the license will be considered final unless we issue a public notice to the contrary no later than sixty days after receipt of the specific description of the landing points. In addition, we will continue to require cable landing license applicants to give detailed ownership information, a description of the submarine cable, including the type, number of channels, capacity, information as to whether the cable will be operated on a common carrier or non-common carrier basis, and other information as necessary for us to act on the application.

55. We will modify our proposal, however, as we find merit to AT&T's and MCI's suggestions. In regard to AT&T's comments, our past practice has not differentiated between the ownership information required for common carrier and non-common carrier cable licenses, and we retain that approach in our new rules. Although our current rules require more detailed ownership information from common carrier applicants because they must respond to the additional ownership questions in the Section 214 application accompanying their submarine cable landing license application, it has been our practice to elicit this same information from non-common carrier applicants on an informal basis. In light of AT&T's comments, however, we believe it will make things easier and clearer for non-common carrier applicants if we place in our new rules the type of ownership information needed to act on their applications. This will save both non-common carrier applicants and the International Bureau staff the additional time needed to respond to post-filing requests for additional ownership information.

56. We also adopt in part MCI's recommended changes to our proposal. We will require applicants promptly to disclose to any interested party, upon written request, accurate

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[74] *Notice* at ¶ 41.

[75] According to AT&T, investors in non-common carrier systems, like the owners of common carrier systems, assume great economic risk when deciding to construct such systems. AT&T Comments at 10-11.

information concerning the location and timing for the construction of the cable facility.[76] We believe that this is the least intrusive way of meeting the need for industry to know for planning purposes what cable capacity is available now and in the near future, and this requirement should meet that need. We do not believe the additional burden of filing updates with the Commission is necessary to meet this need. We believe this revised proposal allows carriers to monitor the availability of future capacity but also accommodates the financial realities of the companies that lay the cables.

8. Contents of international Section 214 applications

(a) The *Notice*

57. In the *Notice*, we proposed to simplify the application process for obtaining international Section 214 authorizations. We proposed to eliminate much of the information required in an international Section 214 application, create a new rule specific to the information needed to process an international Section 214 application, and clarify our definition of a foreign carrier in the new rule.

(b) Positions of the Parties

58. Commenters support reducing the amount of information filed in international Section 214 applications.[77] TTH and AT&T support the Commission's view that U.S. international carriers' investment in submarine cable facilities are business decisions taken at their own risk and as such need not require extensive review.[78] Additionally, TTH states that requiring carriers to disclose confidential financial information may inhibit them from constructing new facilities. ACTA supports in particular our clarification to the definition of a foreign carrier.[79]

(c) Discussion

59. We adopt the rules proposed in the *Notice*. International Section 214 applicants now will file applications under the new Section 63.18 which focuses exclusively on the contents of Section 214 applications for international carriers. This rule eliminates the requirement to file much information previously required under the old Section 63.01. For

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[76] MCI Comments at 8.

[77] Supporting comments were filed by: TTH Comments at 4, MFSI Comments at 4, ACTA Comments at 4, BTNA Comments at 2, and WorldCom Comments at 2.

[78] AT&T Comments at 12. *See* TTH Comments at 4 (stating that such information is not necessary because carriers invest in communications facilities at their own risk based on business considerations, rather than captive ratepayers financing such facilities).

[79] ACTA Comments at 4.